



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE

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Ms. Kitty Simonds
Executive Director
Western Pacific Regional
Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, Hawaii 96813

Dear Ms. Simonds:

Thank you for your letter of December 17, regarding progress on the proposed designation for a national marine sanctuary in the northwestern Hawaiian Islands. I would like to thank you and your staff for the time and effort you have made to participate in the process to date. There have been close to 20 meetings of the various working groups reviewing fishery issues and your input has been valuable not only to help frame the issues, but to provide significant technical assistance as well.

As you noted in your letter, the Reserve Advisory Council (RAC) is still working on the specific mission, goals, and objectives for the proposed sanctuary. They are in the development stage and discussion will continue over the next several months. At the recent January 21 and 22 meeting, the RAC deliberated and made some refinements with the assistance of your staff's participation but the RAC will not complete their review and provide the NMSP with recommendations until the March and June RAC meetings. At that point, the National Marine Sanctuary Program will review the RAC's recommendation and make a decision regarding what goals and objectives to adopt as part of the marine sanctuary proposal.

I would like to take this opportunity to address the broader issue of requirements for designation and management under the National Marine Sanctuaries Act (NMSA). The action under consideration is the designation of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve as a national marine sanctuary, pursuant to the purposes, requirements, and procedures of the NMSA. NOAA has an obligation to ensure the purposes of the NMSA are met and that the requirements and procedures are followed. The primary purpose of the NMSA is resource protection. 16 U.S.C. 1431(b)(6).

Your letter references an excerpt from the NMSA, specifically that "wise and sustainable use of the marine environment" is one of the purposes and policies of that act. This reference is part of the NMSA purpose and policy section, specifically "to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archaeological resources of the National Marine Sanctuary System"



(16 U.S.C. 1431(b)(4)), which may not be the same as "sustainable" under the Magnuson-Stevens Act. Nor is this provision focused on promoting any particular type or level of activity within a national marine sanctuary. Sustainable use under the NMSA is applied in the context of achieving the Act's primary purpose of resource protection, and we manage a sanctuary in a way that facilitates uses only to the "extent [they are] compatible with the primary objective of resource protection" (16 U.S.C. 1431(b)(6)). Consequently, NOAA's legal responsibilities and the management actions NOAA undertakes for a national marine sanctuary may be different from NOAA's legal responsibilities and actions under other statutes such as the Magnuson-Stevens Act. However, this does not preclude compatible multiple use as being adopted as a goal of a national marine sanctuary. Many commercial and recreational activities are allowed in most sanctuary waters, including diving, fishing, snorkeling, kayaking, wildlife viewing, charter boat activities, and cargo and passenger transport.

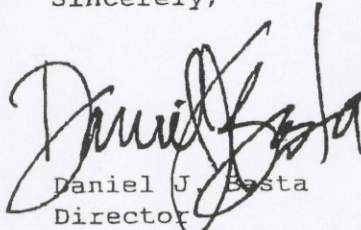
In other instances where NOAA has examined the level of fishing activities in a national marine sanctuary, we have worked successfully with the relevant fishery management council to develop an appropriate set of regulations to meet the particular sanctuary's goals and objectives. I anticipate NOAA will be able to do the same for the Northwestern Hawaiian Islands. Once we receive the RAC's recommendations this spring, we will finalize the goals and objectives for the proposed sanctuary. In August, we expect to formally provide the Western Pacific Regional Fishery Management Council (WPRFMC) the opportunity to prepare draft sanctuary fishing regulations for the proposed designation pursuant to section 304(a)(5) of the NMSA (16 U.S.C. 1434(a)(5)). Similar to what NOAA has done with other Fishery Management Councils, we will provide specific sanctuary goals and objectives and supporting information to the WPRFMC to facilitate its development of draft fishing regulations for the proposed Northwestern Hawaiian Islands sanctuary. Throughout this process I hope we can continue to discuss any concerns and issues and understand our different perspectives and statutory mandates.

Your letter correctly notes that there are limitations placed on the ability of any new national marine sanctuary to terminate leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation. This limitation is found both in 15 C.F.R. 922.47 and Section 304(c)(1) of the NMSA (16 U.S.C. 1434(c)(1)). However, Section 304(c)(2) (16 U.S.C. 1434(c)(2)) and 15 C.F.R. 922.47 both provide that the exercise of such leases, permits, etc. is subject to sanctuary regulation consistent with the purposes for which the sanctuary is designated. The nature and scope of any such regulation for fishing would be determined through the designation process with continued participation by the WPRFMC, as described above.

I hope this letter addresses some of your concerns and I look forward to working with you and your staff as we move forward with the

designation process. I am confident that we can work together for our nation to achieve a significant step in marine resource conservation for such an important area as the Northwestern Hawaiian Islands.

Sincerely,



Daniel J. Festa
Director
National Marine Sanctuary Program

P.S. Hope to ~~SEE~~ you
soon!